

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

**PETITION FOR RECONSIDERATION**

**Petitioners, Wyoming Public Service Commission**

December 29, 2011

The Wyoming Public Service Commission (WyPSC), pursuant to 47 U.S.C. §405, 47 C.F.R. § 1.106, and other applicable law, petitions the Federal Communications Commission (Commission) to reconsider a requirement of the state eligible telecommunications carrier (ETC) certification process set forth in the *Report and Order* in the above-captioned matter.<sup>1</sup>

Under proposed Section 54.313(a)(1) and paragraph 592 of the *Report and Order*, the Commission requires every recipient of high cost support to self-certify annually that the pricing of its voice services is no more than two standard deviations above the applicable national average urban rate for voice services. This is essentially a requirement that a company certify that its rates are reasonably comparable to the national average urban rate. (*Report and Order*, ¶243.) Such a certification for Wyoming ETCs would be factually incorrect and inconsistent with previous rulings. For example:

Consistent with Commission requirements for requests for additional support under the current non-rural mechanism, the Wyoming petitioners have established that Wyoming's rural rates are not reasonably comparable to urban rates nationwide and that Wyoming has taken all practicable steps to achieve reasonable comparability through state action and existing federal support. Thus, we find that the Wyoming petitioners have demonstrated that supplemental high-cost support is required under the current non-rural high-cost support mechanism to achieve reasonably comparable rates.

In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service: *Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier*, WC Docket No. 05-337, CC Docket No. 96-45, Released April 16, 2010. ¶5

In ¶859 of the *Report and Order*, the Commission itself observes, "Similarly, in Wyoming, which has also rebalanced rates, many rural customers face total charges for basic residential phone service in excess of \$40 per month." In Appendix D of the *Report and Order*,

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<sup>1</sup> *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, Docket Nos. WC 10-90 *et al.* (November 18, 2011) (*Report and Order*)

¶14, the Commission observes, “...PRTC ignores the facts of the Wyoming case. There, the petitioners (the Wyoming Public Service Commission and the Office of Consumer Advocate) demonstrated that rates for customers in rural areas of Wyoming were not reasonably comparable to the national average urban rate, and that the state had taken all reasonably possible steps to achieve rate comparability.”

Federal support in Wyoming has never reached reasonable comparability with urban rates, and the WyPSC has no reason to believe that this circumstance has changed. The only calculations presently available to the WyPSC indicate that two standard deviations above the national average urban rate yields a price less than \$28. For example, a NASUCA chart summarizing data on rates as of February 2006 for 11,252 wire centers nationwide served by non-rural carriers (93% of the U.S. population according to NASUCA) showed an average price of flat-rate residential service plus SLC and FUSF equal to \$19.63. \$19.63 plus two standard deviations where the standard deviation is \$3.85 yields \$27.33. In contrast, as shown in Attachment A, Wyoming’s most recent statewide average is \$39.95 per month before any state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) are added to the customer’s basic local service bill.

Through the proposed regulation and the *Report and Order*, the reasonable comparability issue would be extinguished and never substantively addressed. This would be arbitrary and capricious. As we previously explained in proceedings before the 10<sup>th</sup> Circuit Court of Appeals:

[On February 8, 1996,] [i]n Section 254 of the Communications Act, Congress directed the FCC to act within [fifteen] months to establish a universal service fund to support affordable telecommunications services in all regions of the country, and to ensure, in particular, that customers in rural and urban areas pay “reasonably comparable” rates for their services and enjoy comparable services. But in the almost 13 years since then, the FCC has repeatedly failed to establish a mechanism that achieves these aims with respect to the funding of high-cost services provided by so-called “non-rural” carriers. Instead, each time the FCC has revisited its obligations under Section 254 with respect to supporting these carriers, it has produced a mechanism that this Court has deemed not only arbitrary but also inconsistent with the statute’s mandatory guidelines. As a result, this Court has twice rejected and remanded the FCC’s non-rural, high-

cost universal service orders, first in 2001 and again in 2005. Both times, the Court directed the FCC to revisit its obligations under Section 254 and to adopt an order that is faithful to the statute's principles and goals. And in the 2005 *Qwest II* decision, the Court expressed its expectation that the FCC would do so promptly.

Instead, the FCC has simply ignored altogether both the Court's remand and the agency's fundamental obligations under Section 254. After issuing a notice of proposed rulemaking immediately after the *Qwest II* decision, the FCC has never revisited the remand issues—even in the face of repeated entreaties from the industry and states to do so. Thus, during the almost thirteen years that have elapsed since Congress directed the FCC to adopt a support mechanism within *fifteen months*, the industry has operated without a lawful high-cost universal service support mechanism for non-rural carriers, and, since 2003, the unlawful, insufficient mechanism the FCC adopted prior to the *Qwest II* remand has remained in place.

*Qwest Corp., et al. v. FCC*, No. 09-9502, 10<sup>th</sup> Circuit Court of Appeals, Petition for Writ of Mandamus to the Federal Communications Commission, (Filed January 14, 2009), pp. 4-5.

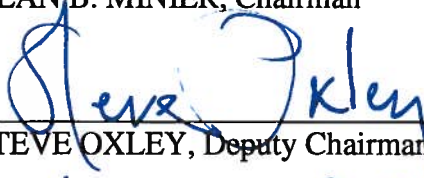
We urge the Commission to revise the *Report and Order* and proposed regulation to allow recipients of high-cost support to simply certify their pricing. A state commission should be authorized to gather evidence to determine whether high-cost support and ETC status are warranted even when such pricing exceeds the Commission's benchmark.

Respectfully submitted December 29, 2011.

PUBLIC SERVICE COMMISSION OF WYOMING



ALAN B. MINIER, Chairman



STEVE OXLEY, Deputy Chairman



KATHLEEN A. LEWIS, Commissioner

## Attachment A

### Wyoming ILEC Residential Rates

	1995	12/16/2011
Qwest		
base rate area:	\$14.64	\$23.10
farthest from base area:	\$24.54	\$69.35*
Union Telephone		
base rate area:	\$8.49	\$41.68
farthest from base area:	\$26.49	\$89.20
CenturyTel of Wyoming		
base rate area:	\$10.00	\$15.00
farthest from base area:	\$17.50	\$28.00
Dubois Telephone	\$11.00	\$31.76
Range Telephone	\$11.65	\$17.50
RT Communications		
Shoshoni & central WY exch:	\$10.04	\$23.99
farthest from base area:	\$19.94	\$33.89
Thermopolis & Newcastle:	\$10.78	\$23.89
farthest from base area:	\$20.68	\$33.89
Worland exchange:	\$11.51	\$23.99
farthest from base area:	\$21.41	\$33.89
Pine Bluffs, Burns, Carpenter:	\$12.98	\$23.99
farthest from base area:	\$22.88	\$33.89
Embarq/United		
Guernsey exchange:	\$7.94	\$35.38
LaGrange exchange:	\$11.13	\$71.34
Lingle exchange:	\$11.13	\$71.34
West Lyman	\$11.13	\$70.82
Torrington exchange:	\$11.13	\$26.24
TCT West		
Greybull exchange:	\$10.14	\$27.31
Lovell exchange:	\$10.78	\$30.63
Basin exchange:	\$10.78	\$31.42
Frannie & Meeteetse:	\$10.78	\$45.08*
Tri County Telephone		
Burlington exchange:	\$6.75	\$44.86*
all other exchanges:	\$8.25	\$45.08*
Teton Telecom **	\$29.65 **	\$31.25
Silver Star Communications	\$16.80	\$26.45
Chugwater Telephone	\$10.50	\$80.76*
All West Communications	\$14.25	\$59.52*
<b>Average</b>	<b>\$14.05</b>	<b>\$39.95</b>

\* Before applying credits for Wyoming and federal universal service fund support.

\*\* Teton Telecom did not exist in 1995. Earlier prices shown are Teton's initial rates.